IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No.152 of 2007
In
Suit No.2302 of 1992
In
(From Decree Dated 12.7.2006)

1. Municipal Corporation of Greater Mumbai, a body corporate having its Office at Mahapalika Marg, Fort, Mumbai - 400 001.

2. Deputy Municipal Commissioner (Z-1), having his office at 'C' Ward Municipal Office, 76 Shrikant Marg, of Chandanwadi, Bombay 400 002.

3. The Ward Officer (Asstt. Commissioner), 'C' Ward, having his office at 'C' Ward Municipal Office, 76 Shrikant Marg, of Chandanwadi, Bombay 400 002.

.. Appellants. (Org.Defendant Nos.1 to 3)

Vs.

Azharali Anwarali Sambhalwala, having his office and business at 106-108, Masjid Street, Null Bazar, Mumbai -3.

.. Respondent (Org.Plaintiff)

--

Shri R.D.Dhanuka with Ms V.M. Chaudhary with Shri K.N. Gaikwad for the appellants.

Shri Nitin Nikam i/b Shri A.R.Khan for the Respondent.

--

CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 30TH MARCH, 2007

ORAL JUDGMENT: (Per R.M.S.Khandeparkar, J)

1. Heard. Admit.

2. Shri Nikam, the learned advocate waives service for the Respondent.

3. By consent, heard forthwith.

4. The present appeal arises from the order dated 12th July, 2006 passed in Suit No.2302 of 1992 purportedly to be a judgment in terms of Order VIII Rule 10 of the Code of Civil Procedure, 1908. Though the impugned order is sought to be challenged on various grounds including the ground that the appellant had filed the praecipe on 23rd July, 1998 before the Learned Single Judge seeking leave to place on record the written statement in the matter, it is not necessary to go into all these issues, and suffice to refer to only one ground viz. that the impugned order does not satisfy the requirement of Order VIII Rule 10 of the Code of Civil Procedure.

5. It is not in dispute that by the impugned order, the Learned Single Judge sought to exercise powers under Order VIII Rule 10 of the Code of Civil Procedure to dispose of the suit on account of failure on the part of the appellants to file written statement. It cannot be disputed that the Order VIII Rule 10 of the Code of Civil Procedure empowers the Court to pass a decree in the suit in case of failure on the part of the defendant to file a written statement within the time granted to file the same. However, such a decree has to be preceded by a judgment of the Court based on the facts stated in the plaint. The provisions of law comprised under Order VIII Rule 10 of the Code of Civil Procedure are very clear in that regard and have also been explained by the Apex Court in **Balraj Taneja & Anr. v. Sunil Madan & Anr.,** reported in (1999) 8 SCC 396 as also in the unreported decision of this Court in the matter of **All India Central Bank Employees Congress, a trade union & Ors.** v. **Central Bank of India,** delivered on 17th January, 2007 in Appeal No.901 of 2006 in Suit No.3856 of 1996. Applying the law laid down by the Apex Court and followed by this Court in the above quoted judgment to the matter in issue, it is to be noted that the Learned Single Judge did not pronounce any judgment in terms of the provisions of law

comprised under Order VIII Rule 10 of the Code of Civil Procedure while disposing the suit No.2302 of 1992 wherein the appellant/defendant stated to have been failed to file the written statement. On this ground alone, the impugned order cannot be sustained and is liable to be set aside and the matter to be remanded to the Learned Single Judge to proceed with the matter in accordance with the provisions of law.

6. In normal course, on remand of the matter, it would have been for the purpose of pronouncement of a judgment in terms of the Order VIII Rule 10 of the Code of Civil Procedure. However, considering the contentions sought to be raised on behalf of the appellants that the appellants had filed the praecipe on 23rd July, 1998 seeking leave to place on record the written statement, it would be too premature to give any such direction in the matter. It would be in the fitness of case, we leave it to the discretion of the Learned Single Judge to take an appropriate decision in the matter including a decision on the praecipe stated to have been filed by the appellants/defendants. Liberty to the appellants to take out necessary proceedings in respect of the said praecipe and/or for seeking leave to file the written statement on record.

7. In the result, therefore, the appeal is allowed. The impugned order is set aside and the matter is remanded to the Learned Single Judge to proceed with the same in accordance with the provisions of law. Needless to say that in view of the setting aside of the impugned order all the proceedings which have been initiated by the respondent on the basis of the impugned order shall stand automatically quashed and set aside.

8. Order accordingly. There shall be no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(D.G.KARNIK, J)